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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ROBERT T. NEUFELD
KING & SPALDING LLP
191 PEACHTREE STREET
45TH FLOOR
ATLANTA, GA 30303-1763

EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/638,771	Applicant(s) VASHI ET AL.	
	Examiner Kathleen M Christman	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004 and 29 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-24 and 26-46 is/are pending in the application.
4a) Of the above claim(s) 28-34 and 41-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-15, 22-24, 26, 27 and 35-40 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/19/03, 08/18/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: PTO-1449 dated: 10/14/03, 12/11/03, 03/12/04, 05/26/04, 10/28/04, 11/19/04.

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DETAILED ACTION

In response to the amendments filed 07/19/2004 and 09/29/2004, claims 6 and 25 have been cancelled; claims 1-5, 7-24, and newly added claims 26-46 are pending.

Election/Restrictions

1. Newly submitted claims 28-34 and 41-46 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 28-34 are drawn to a method for training a user. Claims 41-46 are drawn to a method for training a call center agent. The inventions of the claims are related as subcombinations usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately useable. In the instant case, the first invention has the separate utility of being used in a traditional classroom educational environment. The inventions are distinct from the previously claimed invention in that the previously claimed invention is drawn to a method for the authoring of lessons and has its own separate utility such as being used to create surveys or questionnaires.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-34 and 41-46 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

The information disclosure statements filed 02/19/2003 and 08/18/2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Only US applications, and US patent application publications have been considered. The affidavit cited under NPL on the Information Disclosure Statement dated 10/28/2004 has

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not been considered. Any affidavits should be submitted under the appropriate sections of 37 CFR 1.131 or 1.132.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowe (US 5228859). Rowe teaches a computer readable medium and system including computer executable instructions defining: an authoring program module accessible by a lesson designer to create a plurality of lessons (col. 10: 62+, defined as the authoring mode); each lesson including one or more links to versatile resources for display or play in association with the lesson (the audio, video, and keystroke notations associated with the lessons); each resource stored in memory and independently retrievable, the resources including a first resource that is played in association with a first communication mode (the application program, col. 4: 65-68) and a second resource that is played in association with a second communication mode (the audio portions (**claim 5**), col. 4: 60-63); a runner program module accessible by lessons takers for running the lessons and operable for synchronizing (aligning) the first resource and second resource to create an integrated multi-mode lesson (the tutorial program, col. 4: 50-68, and other various descriptions throughout the specification); and a relational database accessible by the runner program modules and containing information for retrieving desired resources for display or play in association with the lessons (Figure 3), as in **claim 1 and 15**.

3. Claims 1, 7, 22, 28-31 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Sallette (US 6155840). Sallette teaches a computer based training system including: a lesson server comprising a plurality of lessons, each lesson comprising synchronized audio and visual resources (distributed learning server, Figure 1, elements 102A and B, and col. 6: 59-67 and col. 8: 8-20); an audio server coupled to the lesson server and operable for playing the audio resources (the telephone network, col. 8: 8-20); a computing device coupled to the lesson server and operable for receiving at least one of the plurality of lessons and displaying the visual resources (the audience computers, Figure 1 elements 108a-c); and a telephone (**claim 7**) coupled to the audio server and located proximate to the computing device, the telephone operable for receiving audio resources being played by the audio server (the telephone at the audience computer is coupled to the server through the telephone network, col. 8: 8-14), as in **claim 22**, and similar recitations in independent **claim 1**. Regarding **claims 28 and 34**, Sallette teaches a computer based method for receiving training including: accessing a runner program module with a client computing device (accessing the system through the client computer, Figures 6 and 7); selecting a lesson using the runner program module (the user entering a presentation); receiving a graphical resource associated with the lesson (the video feed and content, at least col. 5: 1-33); receiving an audio resource associated with the with the lesson, the audio resource synchronized with the graphical resource (col. 8: 10-20). The graphical resource is received from a lesson server (**claim 29**), see Figure 1 elements 102(a-b). While the audio information is received from an audio server (**claim 30**), as is shown in col. 8: 10-20 as the telephone network. The user may also transmit responses to the lesson server (**claim 31**), taught as user feedback in col. 8: 62+.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-3, 5, 8, 9, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pellegrino et al (US 6149441) and Rowe (US 5228859). Pellegrino et al teaches a computer-based educational system including: an authoring program module accessible by a lesson designer to create a plurality of lessons (the lesson builder, Figure 1: 74); each lesson including one or more links to versatile resources (lesson material, col. 2: 48-49) for display or play in association with the lesson; each resource stored in memory and independently retrievable for display or play in association with multiple lessons (the media catalog, Figure 1: 62 and col. 8: 27-30); one or more runner program modules accessible by lesson takers for running the lessons (lesson deliverer, col. 2: 62-65); and a relational database accessible by the runner program modules and containing information for retrieving desired resources for display or play in association the lessons (the learning materials database), as in **claims 1 and 15**. See also col. 2: 46-54. Each lesson comprising a plurality of pages where each page comprises one or more controls defining visual and functional aspects of the page, links to resources, and script instructions defining lesson logic for implementing the page, as in **claim 2**, is taught at col. 9: 49-54, col. 9: 66 – col. 10: 2 and further at col. 10: 45-49. The authoring module comprising a plurality of menu driven commands that the lesson designer selectively activates to create the pages, add the controls to the pages, link the pages to the resources, and create the script instructions for rendering pages and implementing lesson logic, as in **claim 3**, is clearly visible in Figures 9-32, where script instructions correspond to at least "navigation elements". The resources being a sound file, or a video file, as in

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claim 5, are shown at col. 11: 16-17. Regarding **claims 8 and 9**, the features of these claims demonstrate the inherent nature of web-page functionality, which Pellegrino teaches at col. 9: 20-61. The organization of the resources, as in **claim 14** is clearly shown in col. 11: 24-51.

Pellegrino fails to specifically teach that the resources include a first resource that is played in association with a first communication mode and second resource that is played in association with a second communication mode (**claims 1 and 15**). Rowe teaches these features in the manner shown above, but fails to teach the specific lesson formats and network structure as mentioned in **claims 2, 3, 8 and 9**. Rowe however, does teach an embodiment of substantially similar features to those cited above in which the all the information is contained in a single media (see the description of the second embodiment starting in col. 11: 21). Rowe also teaches that the intent of the invention is to provide information in a format that is capable of being transmitted through a computer network (col. 2: 48-50). It would have been obvious to one of ordinary skill in the art to adapt the Pellegrino et al system with the Rowe delivery method so as provide separate yet synchronized audio and video training without noticeably affecting the simultaneous running of any computer programs (col. 2: 44-47 of Rowe). Alternatively it would have been obvious to one of ordinary skill in the art to update the Rowe system with the network features and training layouts of Pellegrino so as to provide for a diverse system capable of communicating to a plurality of users located in separate geographical areas.

5. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Pellegrino et al (US 6149441) and Rowe (US 5228859) as applied to claims 1 and 2 above, and further in view of Remschel (US 6141528). Pellegrino et al and Rowe teach all aspects of the invention as shown above, but fail to specifically teach: a user providing responses to prompts played or displayed as part of a lesson, and an evaluation score being computed based on the user's response (**claim 10**); the user responses being stored for subsequent playback (**claim 11**); the lesson progressing upon response to an audible response and a predetermined period of silence following the audible response (**claim 12**); and the lesson being divided into a plurality of task types, each task type comprising similar tasks relating to a common skill, and each task type configured to run in a training mode (**claim 13**).

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Remschel teaches a computer-based training system in which: a lesson is divided into a plurality of tasks types (questions) each task type comprising similar tasks relating to a common skill (language); a user providing responses to prompts played or displayed as part of the lesson; and each task type configured to run in a training mode, as in **claim 13** and shown at col. 5: 9-13 and col. 14: 7-19 of Remschel. Recording of the student responses during a lesson and subsequently playing back the student responses in connection with the lesson for evaluation purposes is taught in the section entitled "Student Tape Auto Compile" starting at col. 11: 48. Computing and storing a score based on the interactive student responses received during the lesson is taught as the "Response Analyzer" described at col. 12: 50+.

Pellegrino et al teaches at col. 18: 44-49 the ability for a teacher to add "assessment" options into the training program but fails to teach specific details of the format these assessments may take. Given this one of ordinary skill in the art would look to outside sources. As such it would be obvious to include the assessment functions of the Remschel reference into the Pellegrino et al invention so as to allow a teacher to monitor the progress of the user.

Further, it is noted that Remschel does not specifically teach that the system will progress the lesson upon a predetermined period of silence after receiving a response. It is the examiner's position that this functionality is old and well known in the art. It would be obvious to incorporate it into the above combination so as to ensure that the student has had the ability fully answer a question.

6. Claims 23, 24, 26, 27, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallette (US 6155840) in view of Remschel (US 6141528). Sallette teaches all features of the claimed invention as shown above with respect to claims 22 and 28, but fails to specifically teach: the runner program being operable to record a response during the lesson for subsequent playback (**claim 23**); the runner program capable of computing and scoring a score based on the responses (**claim 24**); the response being an audio response (**claims 26 and 32**); or the runner program operable to advance the lesson upon receiving the response (**claims 27 and 33**).

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Remschel teaches, recording of the student responses, which are verbal or audio, during a lesson and subsequently playing back the student responses in connection with the lesson for evaluation purposes is taught in the section entitled "Student Tape Auto Compile" starting at col. 11: 48. Computing and storing a score based on the interactive student responses received during the lesson, as in claim 24, is taught as the "Response Analyzer" described at col. 12: 50+. The ability for the system to advance the lesson is shown in col. 14: 7-20. It would have been obvious to one of ordinary skill in the art to modify the Sallette et al system with those features taught by Remschel so as to produce a system in which a user could audibly respond to questions, and allow a teacher or presenter to view the graded progress of the users.

Response to Arguments

7. In the response dated 07/19/2004, applicant states that the amendments to claim 1, incorporate all the limitations of previously indicated allowable claim 6. However, the applicant has failed to amend the claim to include all the limitations of the base claim. For example, the applicant has removed the limitation stating that the resources are for play or display in multiple lessons. The claim has also been amended to include the phrase "operable". Further, applicant states that independent claim 22 has been amended to include a similar feature to previously indicated allowable claim 7. However, claim 7 was previously a method claim. In contrast, now amended claim 22 is a system claim, which is of different scope than the method of claim 7. Applicant further states that newly added independent claims 28, 35, and 41 recite similar features to previously indicated allowable claim 6. However, these claims are of substantially broader scope than the original claims and fail to recite any of the limitations found in original claim 1. The applicant has failed to argue the merits of any newly added claims. Regardless, the examiner believes that the newly cited patent to Rowe would be applicable to the claims had the applicant properly amended them. As such, the previously indicated allowability of claims 6 and 7 is withdrawn and this office action has been made non-final.

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Applicant failed to challenge the old and well-known statements made in the office action dated 10/01/2003. As such the finding that it is old and well known in the art to progress a lesson after a predetermined period of silence is now considered **admitted prior art**.

Allowable Subject Matter


8. Claims 16-21 remain allowed, for the reasons set forth in the office action dated 10/01/2003.

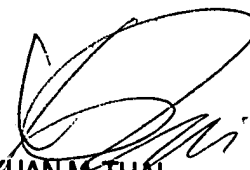
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen M. Christman
February 3, 2005


XUAN M. THAI
PRIMARY EXAMINER
Au 3713